Dependency Mediation

Overview

**Dependency
Mediation Program
Families & Children's Bureau
Superior Court of California
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The primary purpose of the court's involvement in child abuse and neglect cases is preserving and helping families. Yet the adversarial nature of court proceedings in these non-criminal cases can re-traumatize children and undermine families.

Dependency Mediation is a program of the Juvenile Court that provides an alternative to contested hearings and allows for the parents and other parties to more directly participate in the resolution of issues. The mediator, parents, child welfare worker, and other participants meet in a neutral setting to express ideas and concerns, explore solutions and create binding agreements. With the judge's review and approval, the written agreements become court orders.

Encouraging shared problem solving while preserving the court's authority to protect children provides an early non-adversarial resolution of cases of child abuse and neglect. Once a case is mediated, it is often easier to resolve any future differences that arise because the parties are committed to working together on behalf of the child.

**Related law and procedures applying to Dependency Mediation
California Welfare & Institutions Code, section 350(a)(2)**

California Rules of Court, Rule 1405.5 regarding qualifications of mediators and standards of practice

Local Rules of Superior Court of California, Alameda County, Rule 10.2.13, Dependency Mediation

California Evidence Code, Section 1115, et seq., regarding confidentiality

Definition   Definition:
- ❑ Dependency Mediation is an informal, confidential, process conducted by specially trained, neutral third-party mediators who have no decision-making power. Dependency Mediation provides a non-adversarial setting in which a mediator assists the parties in reaching fully informed and mutually acceptable resolution that focuses on the child's safety and best interest and the safety of all family members. Dependency Mediation is concerned with any and all issues related to child protection.

Who are the mediators?
- ❑ Mediators are selected because of their training and skill in mediation, in addition to knowledge of juvenile law and/or child welfare matters. The mediator does not make decisions or recommendations. The mediator is there to help the parties talk through their differences and create their own agreement if possible.

Philosophy   Mediation is:
- ❑ Based on the concept that meaningful resolutions are more likely when all parties understand each other's perspective and work together to forge an agreement.
- ❑ Designed to be a respectful, confidential process where everyone's interests and concerns can be heard.
- ❑ An effort to involve parents and families *directly* in the decisions that affect them, while keeping the safety of the children as the central focus.
- ❑ An opportunity for shared decision making between the Department of Children & Family Services, the families and the court.
- ❑ Consistent with the court's and agency family strengths perspective.

Purpose and benefits of dependency mediation

The purpose of the Dependency Mediation program is to:

❑ Help the parties reach agreement that is designed to protect the child from future acts of abuse or neglect.
❑ Reduce the costly emotional impact of contested hearings on the child and family.
❑ Bring parties together to ensure understanding of the issues and the reasons for intervention.
❑ Produce a document describing the agreement and the roles and responsibilities of all parties.
❑ Identify and implement services for the child and family as soon as possible.
❑ In addition, mediation often
   o Reduces the animosity that can develop during an adversarial court process, and thus increase the parents' willingness to forge an alliance with the child welfare worker.
   o Helps parents, and other participant feel that their point of view has been heard.
   o Increases parent's sense of their own ability to influence outcomes.
   o Results in parents better understanding the child's situation, and become more willing to take responsibility for making difficult changes.

By allowing families to engage in shared decision making and to openly discuss issues of safety, dependency mediation sets the stage for the family's continued collaboration with the child welfare worker to meet the parent's case plan objectives. With safety issues addressed, and a shared plan in place, children can often be returned home more quickly.

How does a case get to mediation

How are cases referred for mediation?
- ❑ Any party, at a court hearing, may request mediation to resolve a contested issue, i.e., placement, case plan component, visitation, etc.
- ❑ The court may also decide to refer a case for mediation as a first alternative to a contest hearing.
- ❑ The parties may also all agree to mediation (a stipulation) and the mediation program will arrange a meeting.
- ❑ A child welfare worker, or a party's attorney can also make an Ex Parte application to the court.

When can a case be mediated?
- ❑ Mediation is available at any stage of the dependency proceedings.

What issues can be mediated?
- ❑ Any contested issues, may be referred at the discretion of the court, with the exception of those discussed below. Mediation can involve the entire case or specific issues such as: petition language, jurisdiction, disposition, placement, visitation, communication barriers, family maintenance, reunification or placement services. Mediation is also involved in meetings to draft Custody/Visitation Exit Orders, and Post Adoption Contact Agreements

What issues, or parties, are not generally referred for dependency mediation?
- ❑ At pre-jurisdiction, the following types of allegations are not generally referred to mediation, **although collateral issues, such as placement, visitation, etc., may be referred at this stage.**
  - ○ 300(d) sexual abuse
  - ○ 300(e) minor under 5, severely physically abused
  - ○ 300(f) parent or guardian caused death of another minor
  - ○ 300(i) acts of cruelty
  - ○ Allegations related to pending criminal charges
- ❑ Developmentally delayed or mentally ill parents who are unable to participate fully in the process should also not be referred, unless all attorneys participate.
- ❑ Cases involving domestic violence may be referred to the mediation program which then conducts a differential assessment to modify the mediation process to comply with the terms of any restraining order, safety related issues affecting any party or dependent child, or relevant law or court rule.

NOTE: See Rule 10.2.13, Alameda County Local Rules of Court**.**

The Process   What typically happens in mediation?   .

Mediation is an opportunity to resolve matters at issue that is or may be set for a contested hearing.

1. The Dependency Mediation program receives the referral from the court. The court referral will describe the issues to be mediated, the parties participating, and related details. Other issues may be mediated at the request of parties and by mutual agreement with the approval of the mediator. Copies of court related document (allegations of child abuse or neglect, relevant court reports, other court documents, or information provided by the parties) is attached to the referral.
2. The program assigns the case to a mediator.
3. The mediator completes pre-mediation activities, which generally includes contact with child welfare worker, attorneys, and family members, if possible. If the mediator cannot reach the parent or other family member before the mediation, the mediator will speak first with the parents and family members about the mediation process.
4. The mediator provides an overview of the process, including a description, and limitations, of confidentiality. Participants sign a confidentiality statement acknowledging the discussion. A mediation session is conducted.
5. Mediations generally run about 2-3 hours, with follow-up meetings as appropriate, as time and resources allow.
6. If everyone reaches agreement about how to resolve an issue, the mediator will draft the agreement and review it with the participants for comment and final revision. The agreement is signed by all participants, who each receive a copy. Attorneys not present in mediation receive a copy of the agreement and are expected to sign the original agreement when it is returned to court.   Any objections, or questions, are referred to mediator who will respond as needed and in keeping with the confidentiality of the process.
7. The original agreement is returned to court for final signatures, review by the court, and approval as appropriate.
8. If no agreement is reached, the mediator returns a mediation results form indicating only that the parties met and no agreement was reached.
9. Full or partial agreements are reached in over 80% of the cases referred.

Participants   Participants typically include:
- Parent(s)/guardian(s)
- The child welfare worker or other agency designee. Most often the assigned worker attends, unless it would be detrimental to the mediation process. In this case, another party could be designated at the discretion of the mediator
- The child/ren's attorney
- Others may participate by court order, agreement of the parties, and/or the discretion of the mediator
- Others may include:
  - The children, if over 12, and with the permission of his/her attorney (There is a separate protocol for determining how a child will participate)
  - Other family members
  - Foster parents
  - Foster Family Agency Social Workers
  - Related Service providers
  - CASA volunteer
  - Any other interested party other than attorneys whose involvement may facilitate decision making or resolution

Note:
1. **Domestic Violence dynamics.** In cases involving domestic violence, the program follows a Domestic Violence Assessment Protocol and modifies the mediation process to enhance the safety of victims of domestic violence and all participants, and comply with restraining orders and related statutes and rules of court.

2. **Participation by Parents' Attorneys.** Because this is not a legal or adversarial process, parents' attorneys do not generally attend, unless referred by the court. Parents' attorney, however, are actively involved in pre-mediation discussions, and confer with clients before or at a break in the mediation process. In cases where it seems appropriate to involve attorneys, that may be arranged by the mediator with the agreement of the parties.

Roles and Responsibilities **Mediator**	The mediator: • Orients all participants to the process and has participants sign confidentiality agreements • Manages the mediation process and maintains a neutral position • Identifies and discloses any potential conflict of interest which may challenge their neutrality • Promotes the participants' understanding of the status of the case in relation to the ongoing court process • Treats all mediation participants in a manner that preserves their dignity and self-respect • Discourages participants from blaming the victim and from denying or minimizing allegations of child abuse or violence against any family member • Maintains the confidentiality of the process • Promotes a safe and balanced environment for all participants to express and advocate for their positions and interests • Terminates mediation as necessary or appropriate • Assists participants in separating emotions from the issues • Generates options to help maintain the child's ties with the family and siblings when appropriate • Drafts agreements with participants and obtains signatures • Submits mediation agreements to attorneys and the court
Parents & Caretakers	Parents/guardians: • Arrive at mediation on time and ready to talk about the case • Identify individual and family needs • Share strengths of the children and the family, and any other helpful information • Generate ideas about what they can do to help solve the problems that brought them to court • Sign the mediation agreement if they feel it is in their own and their child's best interest
Child Welfare Workers	Child Welfare Worker: • Arrive at mediation with the authority necessary to make appropriate agreements • Represents the concerns of the Department of Children and Family Services and the interests of the child • Provides information relevant to identifying issues and potential solutions • Assists in developing and implementing interim and long-term plans • Signs the mediation agreements that address Agency interests and concerns
Attorneys for the Parties	Attorneys for the parties: • Prepare the client to participate in mediation by helping identify issues and possible solutions; and explain mediation, including the limits of confidentiality; and also review and approve agreements
Judicial Officer	Judicial Officer: • Oversees the process to protect the best interests of the child and ensures the legality of the results • Accepts, or amends, the agreements as presented or sets the matter for hearing.

Confidentiality   Mediation sessions are confidential and conducted in private. No matters discussed in mediation will be disclosed in a subsequent court report, hearing or trial. The mediator and all parties to the mediation are bound by this policy.
The mediator cannot be called to testify as to anything said in mediation.

EXCEPTIONS to this policy is when a participant is also a mandated reporter and there is disclosure of information that would support new allegations of child abuse or neglect not the subject of the current petition; threats of violence towards oneself or others; or any matters which the parties agree in writing to disclose.

The mediator explains the confidentiality agreement to all parties and obtains their signatures prior to beginning the mediation. The mediator reports to the court only whether mediation occurred and whether agreements are reached.